SENATE TAXATION
EXHIBIT NO. 8
DATE 3-26-07
BILL NO. SB-120

Testimony of Joe Mazurek before the Senate Taxation Committee
on behalf of D.A. Davidson & Companies against SB 120

Mr. Chairman and members of the Committee, my name is Joe Mazurek. I am a registered lobbyist for D.A. Davidson & Companies. D.A. Davidson is opposed to SB 120 because it will create unintended and negative consequences for Montana.

In effect, SB 120 imposes state income taxation at the REIT level and removes state income taxation of REIT dividends at the investor level, to the extent the REIT is paying the state taxes and the investor is a Montana taxpayer. This change turns on its head the well-established principle that real estate investments are not taxed at the REIT level, but rather are required to distribute their earnings to their shareholders, where taxation takes place at the investor level.

Implementing the approach proposed in SB 120 would, to my knowledge, make Montana the only state to effectively impose a double-level income tax for REITs. This unusual state tax treatment would clearly serve to dissuade capital flows to Montana from REITs at a time when many of us are working hard to stimulate capital investment in Montana. The end result would be reduced capitol inflows, reduced economic activity, reduced property taxes for state and local governments, and a dampening effect on the construction industry—one of the strongest segments of the Montana economy.

Real estate investment trusts are, as an institutional funding force, one of the most active participants in the acquisition and development of real property. Even in Montana, REITs have invested hundreds of millions of dollars in properties, employ many residents, pay millions of dollars in property taxes, and generate significant taxable income for resident investors. According to D.A. Davidson & Companies, they currently have 6,135 Montana clients who collectively hold $117.3 million dollars worth of REITs. REIT's represent a vehicle by which individual investors can extend their investment portfolio into real estate in a simple, professionally managed, and diversified way.

To qualify for REIT status, trusts must distribute at least 90% of their investment earnings to their investors. Thus, recognizing that REIT's are really pass through investment vehicles that federal and state tax policy provides for the taxation of REIT distributions at the investor level rather than at the trust level.

If Montana begins imposing state income taxes at the REIT level, the taxes paid will reduce available distributions to a REIT's investors on a dollar-for dollar basis. For Montana investors that will mean a corresponding reduction in their own tax liability and reduced tax payments to state and local governments.

I understand the overriding goal of the Department is to remove tax loopholes and unfair tax avoidance opportunities. The truth is that the existing Montana tax treatment is not some sort of loophole or tax evasion scheme. Rather, it is a well-

established recognition of the nature and purpose of REIT's that is consistent with existing state and federal tax policies. Enactment of this bill would make Montana conspicuous in this area of tax law and would lead to a mistake that would inadvertently lead to reduced economic activity and reduced property tax revenue for State and local governments.

On behalf of D.A. Davidson and Companies, I respectfully request this committee to do not pass SB 120.